



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,366	07/29/2003	Jason P. Eaton	01-18	6288

30031 7590 07/26/2005

MICHAEL W. HAAS, INTELLECTUAL PROPERTY COUNSEL  
RESPIRONICS, INC.  
1010 MURRY RIDGE LANE  
MURRYSVILLE, PA 15668

EXAMINER

BUNIN, ANDREW M

ART UNIT PAPER NUMBER

3743

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

talk

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/629,366	EATON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Andrew M. Bunin	3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 5/11/05.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-41 and 43-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-41 and 43-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

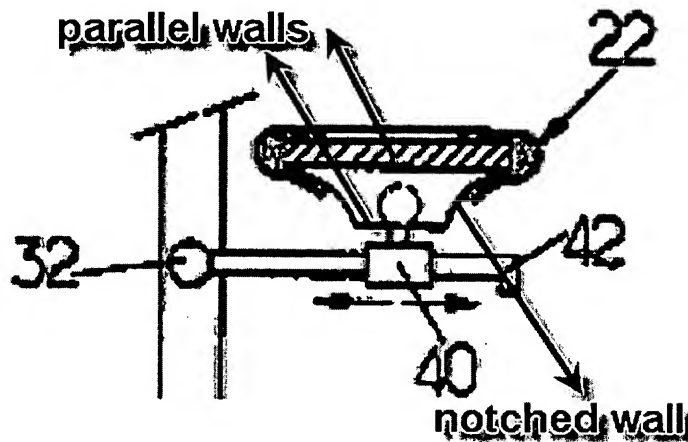
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 11-16, 21-25, 30-35, 40, and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Maire et al. (US 5771886). Maire et al. disclose a gas delivery mask comprising a shell 24, a first connector 22 associated with the shell 24, a second connector 40 adapted to be connected to a headgear wherein the headgear includes at least one strap 20 adapted to secure the mask 8 on a user, and means for releasably connecting the first connector 22 with the second connector 20 such that the second connector is rotateable relative to the first connector in a plurality of axis of rotation simultaneously (see Figure 3) (column 3, lines 25-37). The connection means disclosed by Maire et al. is a ball and socket formation as disclosed in the instant application in Figure 10. Therefore, it is inherent that this same connection in Maire et al. is able to rotate within three axis of rotation.

Maire et al. further disclose the first connector 22 is a female connector integrally formed with the shell 24 and the second connector 40 is a corresponding male connector (Figure 3). In addition, the first connector

Art Unit: 3743

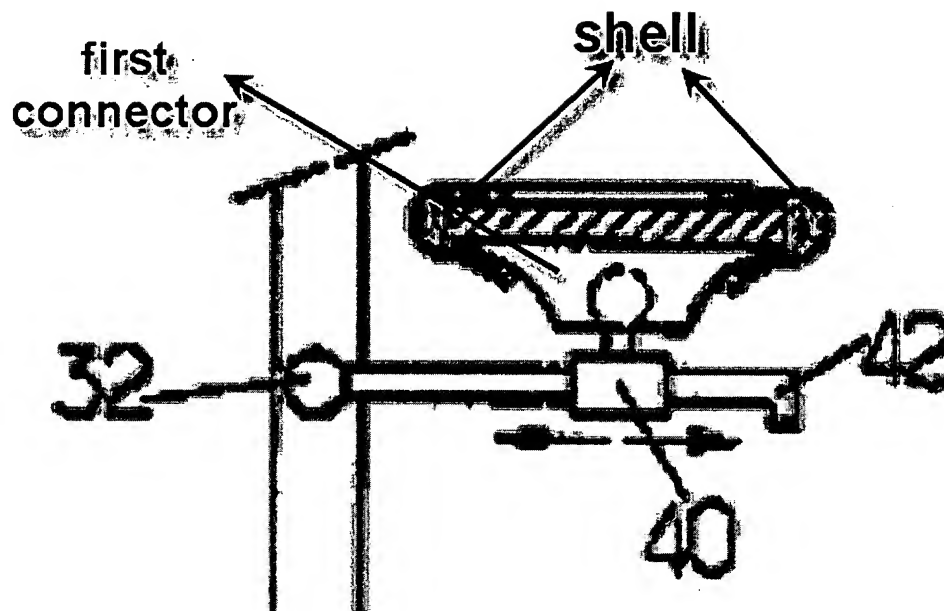
comprises a pair of parallel walls and a curved notched wall abutting the parallel walls (See Figure below).



Prior Art – US 5771886

Maire et al. disclose the second connector 40 comprises an elongated portion 28 having an elongated opening (Figures 2 and 3) adapted to receive a headgear strap 20. The second connector 40 comprises a post portion having an axis and extending from the elongated portion 28/42 and a bulbous end portion associated with the distal end of the post portion, the bulbous end portion adapted for insertion in the notched wall of the first connector 22 so as to permit 360 degrees of rotation about the axis of the post portion (See Figures 2 and 3).

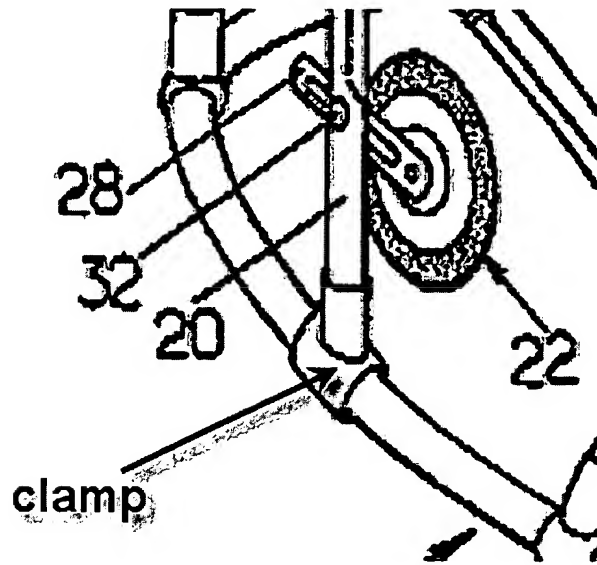
Maire et al. further disclose the first connector 22 is recessed with the shell 24 (shaded portion) and the first connector is a male connector integrally formed with the shell (see Figure below).



Prior Art – US 5771886

As for claim 11, the second connector 40 has a first portion that releasably connects to first connector 22 and a second portion 28/42 that is adapted to connect to a headgear (straps 16 and 20) having at least one strap for securing the mask on a user (see Figures 1-3). The connecting strap 20 is adapted to connect the headgear to the second connector 40.

As for claim 30, Maire et al. disclose a locking clamp coupled to the connecting strap at the point where 20 meets 16 (see Figure below). The dictionary defines a clamp as a device used to join structural parts (dictionary.com) as shown in the Figure below.



As for claim 31, Maire et al. disclose a gas flow-generating device that produces a flow of gas (column 2, lines 57-59). The conduit 14 has a first end portion operatively coupled to the gas flow-generating device and a second end portion, wherein the conduit is adapted to carry the flow of gas from the gas flow generating device during operation of the system.

Lastly, Maire et al. disclose the gas delivery mask as a nasal/oral facemask 8.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3743

Claims 7, 17, 26, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maire et al. Maire et al. disclose the claimed invention except for the second connector is a corresponding female connector. However, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to change the second connector to a female connector and change the first connector to a male connector, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

Examiner continues rejection with the assumption that the first connector is now the male connector and the second connector is the female connector.

Claims 8, 18, 27, 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maire et al. Maire et al. disclose the first connector 40 comprises a flexible post portion. However, Maire et al. doesn't disclose a cone-shaped shaft associated with an end of the post portion. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have a cone-shaped shaft because Applicant hasn't disclosed that by making it a cone shape provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the shape disclosed by Maire et al. Therefore, it would have been obvious matter of design choice to modify Maire et al. to obtain the invention as specified in claim 8.

Art Unit: 3743

Claims 9, 10, 19, 20, 28, 29, 38, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maire et al in view of Anscher (US 5502878). Maire et al. discloses everything except the second connector comprises an elongated portion having an opening adapted to receive a headgear strap. However, Anscher teaches a second connector 14 comprises an elongated portion (32,34, and 36) having an opening adapted to receive a headgear strap. In addition, Anscher teaches the second connector 14 comprises a post extending 30 from the elongated portion and having opposed walls for rotateably receiving a shaft. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the connectors of Maire et al. to the arrangement of the connectors of Anscher in order to have the strap directly connect with the first/second connector for a tight fit.

### ***Response to Arguments***

Applicant's arguments, see page 11, lines 17-21 and page 12, lines 1-5, filed 5/11/05, with respect to the rejection(s) of claim(s) 1, 11, 21, and 31 under 102b have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Maire et al. Maire et al. disclose a first and second connection that is a ball and socket able to rotate in three axis of rotation such as the A, B, and C directions as stated by Applicant in the Remarks. The ball at the end of 40 and connector 22 move around in different directions so that section 22 is at a suitable position for user.



Art Unit: 3743

**Conclusion**

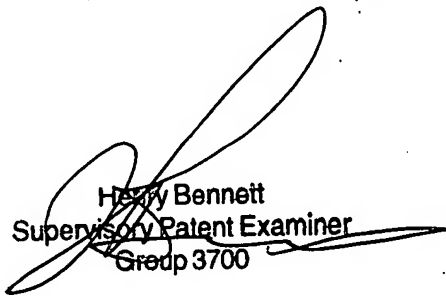
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: US 3433222, US 4414973, US 4960121, and US 2003/0196662

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew M. Bunin whose telephone number is (571)272-4801. The examiner can normally be reached on Monday - Friday, 8 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571)272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
AMB  
7/20/05

  
Henry Bennett  
Supervisory Patent Examiner  
Group 3700